Mem. Mr David Dickson

33

Nov. 24. 1770.

MEMORIAL

FOR

Dr DAVID DICKSON Miniſter of the Goſpel at Newlands, in the Presbytery of Peebles.

[*N. B.* This Memorial, on the part of Dr Dickſon, is humbly offered in obedience to an order of Court for that ſpecial purpoſe, reſpecting the competency of this Court, in the preſent proceſs of reduction and improbation of a pretended ſentence of depoſition of the presbytery of Peebles.]

DR DICKSON, not acknowledging the pretended ſentence of depoſition againſt him, now under challenge by the preſent proceſs of reduction and improbation, has taken the liberty to exhibit this memorial under that character which he formerly held in the Church of Scotland, and of which he maintains he never was legally diveſted or deprived.

The unhappy miſunderſtanding which emerged between him and ſome of the very reverend brethren in the presbytery of Peebles, has been the ſource of much trouble and diſquiet to him for ſeveral years paſt, both in the civil and eccleſiaſtical court. He is not ſo blind to his own foibles, as not to perceive, that from the provocation received, and in proſecution of that reparation which he thought himſelf juſtly intitled to, he may have been guilty of ſundry improprieties which have drawn upon him your Lordſhips diſpleaſure; though he perſuades himſelf, that no conſiderations of that kind will induce your Lordſhips to with-hold from him that juſtice, which, in common with his fellow-ſubjects, he is intitled to; the obtaining of which is the object of the preſent proceſs.

And, in the entry, he will take the liberty to ſay, That ſuppoſing the ſentences of depoſition which are ſaid to have paſſed againſt him, to be, in other reſpects, ever ſo unexceptionable, no

instance in the whole Christian Church can be produced where such a sentence has passed upon such materials as have been brought in charge against him.

The attack was begun in the 1762, upon a libel said to be exhibited against him by that very presbytery by whom he was to be judged; the most singular and extraordinary of its kind that perhaps ever occurred; not accusing him of any immorality in his life and conversation, or of preaching any unsound doctrine, or as guilty of any crime or offence against any positive law and commandment either of God or man; but merely in respect of certain defamatory injurious publications, and expressions *viva voce*, or by writ, to that reverend and respectful body, or to some of the members thereof, as so many individuals.

July 21. 1762. This libel the presbytery are said, by interlocutor, of this date, to have found relevant in all its articles, and to have allowed a a proof thereof; which being taken and reported, as there was not the grue of evidence of sundry of the articles, the presbytery is said to have prepared a state of the proof led by them upon their own libel, stating such particulars as they were pleased to find proven. 1*st*, That he had caused publish the printed paper, entitled, *Report to the synod of Lothian and Tweeddale*, &c.

2*dly*, That he had fabricated another paper, dated 4th July 1758, signed by James Sommers; but which is proved to have been given in to the sheriff-court by Mr Dickson's orders.

3*dly*, That he framed and published the printed paper, dated 6th March 1759.

4*thly*, That he caused publish and print another paper, dated 15th May 1759, entitled, *A letter to the Reverend William Wallace*, &c.

5*thly*, That he framed, published, and caused print, the other paper, dated 21st February 1760, entitled, *Unto the Right Honourable the Lords of Council and Session, the petition of Mr David Dickson*, &c.

6*thly*, That he dictated the letter to Mr Gibson, the printed paper entitled, *Act and Reference by the kirk-session of Newlands to the synod of Lothian and Tweeddale*, dated 25th April 1760; and the printed paper, entitled, *Reference to the General Assembly*, &c. dated 11th May 1761, with a printed letter addressed *To Dr Wishart*: That he is the author of a paper entitled, *Summons issued by the honourable sheriff of Peebles*, dated 11th Aug.

Aug. 1761, and that he cauſed print the ſame: And that he cauſed print and publiſh the paper, entitled, *Information of forgery*, &c. dated 22d Feb. 1762.

7thly, That he fabricated and dictated, in name of the kirk-ſeſſion, but without their knowledge and conſent, the two papers above mentioned, *viz.* Letter directed to Mr Gibſon, and the Act and Reference by the kirk-ſeſſion of Newlands to the ſynod of Lothian and Tweeddale; and that he cauſed Archibald Fairbairn ſign that other paper, entitled, *Reference to the General Aſſembly*, dated 11th May 1761, though Archibald Fairbairn was not at Peebles that day.

8thly, That he inſulted Mr Wallace in the way and manner mentioned in the libel.

Laſtly, That all the printed papers mentioned in the libel were authoriſed and directed to be printed by him.

It is unneceſſary upon this occaſion to inveſtigate the proof of Dr Dickſon's alledged guilt in all or any of the above articles. But allowing all that is alledged to have been proven, it is without example, that ſentence of depoſition was ever pronounced againſt a reverend miniſter of the Church of Scotland for offences of this nature: But as the reverend presbytery ſeem to have been predetermined at any rate to paſs ſentence againſt him, a ſentence of depoſition is ſaid to have been, of this date, pronounced in abſence. Mar. 2. 1763.

This ſentence being reverſed by the General Aſſembly of that year, it is unneceſſary to ſtate the after-proceedings thereupon taken. It terminated in a compromiſe; whereby Dr Dickſon agreed to allow *L.* 30 Sterling to an aſſiſtant-miniſter at Newlands, who might officiate in all the paſtoral offices in that pariſh; and which ſo far took effect, that an aſſiſtant-miniſter was placed there, and ſupported at Mr Dickſon's expence. But Mr Dickſon ſtill continued miniſter of that pariſh, officiated, and was acknowledged as ſuch. And judgment of this Court was obtained in 1765, decerning Mr Dickſon in payment of the *L.* 30 to Mr Mark his aſſiſtant, both for bygones and in time coming.

Mr Dickſon was involved in various other queſtions with this reverend preſbytery, before ſundry courts, both eccleſiaſtical and civil, the particulars of which are unneceſſary to be ſtated.

The very reverend preſbytery thereupon formed a reſolution to attempt a ſecond proceſs of depoſition, on account of various other alledged articles of dittay muſtered up againſt Mr Dickſon, in which

which they were both to be proſecutors and judges; and which was the more extraordinary, for that ſeveral of the articles regarded certain alledged injuries which Mr Dickſon was ſaid to have offered to ſeveral of the members of that very preſbytery by whom he was to be judged. A committee of their number was appointed to make out a libel againſt him, which being approven of in an after-meeting of preſbytery, 10th September 1766, they appointed the ſame to be ſerved; and which being accordingly ſerved, Mr Dickſon appeared before the presbytery at their next ſederunt, 8th October 1766, declined their juriſdiction, entered a proteſt againſt any proceedings that might be taken by them with reſpect to that matter, and appealed to the enſuing ſynod.

Though; by the rules of the Church, this appeal ought to have ſtayed all further proceedings, the preſbytery, after finding the libel relevant, are ſaid to have proceeded to the examination of witneſſes *ex parte*; and amongſt theſe, three of their own number, who had aſſiſted in framing the libel wherein they were to act as judges, and William Oman the preſbytery-clerk, a chief operator in all the fabrications, falſehoods, and forgeries, to be in the ſequel more particularly ſtated.

Dr Dickſon complained to the ſynod, who, without paſſing any judgment, referred the ſame to the next ſynod in May 1767; which delay being highly injurious to Mr Dickſon, in the ſituation he then ſtood, he took an appeal to the enſuing Aſſembly; but the reverend preſbytery, from their exceſſive zeal to accompliſh this depoſition, are ſaid to have held another meeting, of this date, in abſence of Mr Dickſon, and thereupon to have pronounced a ſecond ſentence, depoſing him from the office of the miniſtry.

Apr. 22. 1767.

In October 1767, Mr Dickſon, as miniſter of this pariſh, and in conſequence of his decreet of modification and locality, charged the heritors for payment of his ſtipend for the year 1767 and preceding; of which they having complained by bill of ſuſpenſion, in reſpect of the alledged ſentence of depoſition ſaid to be pronounced by the presbytery of Peebles, the bill was paſſed, and remitted to Lord Stonefield to diſcuſs the reaſons.

Oman, the presbytery-clerk, had been moſt unduly prevailed upon to give, what he was pleaſed to characteriſe, an *extract* of the aforeſaid ſentence of depoſition, which, allowing it to be a fair extract, did neceſſarily ſuppoſe and require, that the minutes and interlocutors of presbytery ſhould have been properly authentica-

te

ted and ſigned, without which the extract could have no warrant.

No authority is requiſite to eſtabliſh a propoſition ſo manifeſtly founded in the nature of things. But it is known to your Lordſhips, that by the ſtatute 1686, *cap.* 3. it is ſpecially enacted, " That all interlocutors pronounced by the Lords of Council and " Seſſion, *and all other judges within the kingdom*, ſhall be ſigned " by the preſident of the court, or the judge-pronouncer thereof; " and prohibits and diſcharges the clerks, upon their peril, to ex- " tract any acts or decreets, unleſs the interlocutors, which are " the warrants thereof, be ſigned as ſaid is; declaring the extracts " which ſhall be given out otherwiſe to be void and null."

And it being thus manifeſt that this ſalutary regulation was meant to comprehend the acts and decreets of every court within the kingdom, civil, criminal, or eccleſiaſtical, it is unneceſſary to reſort to the repeated acts of aſſembly eſtabliſhing the ſame regulations; ſo that if a contrary practice has prevailed in any court whatſomever, it would not be ſufficient to exeem the acts and decreets of ſuch court from the ſtatutory nullity thereby enacted.

It was therefore contended on the part of Mr Dickſon, That no regard could be had to this pretended extract, which was an abſolute falſehood, fabricated *ex poſt facto*; that the pretended ſentence was not ſigned either by the moderator or any others of the members of preſbytery, nor was it even entered on the records of that court.

It was on the other hand contended for the ſuſpenders, That the ſtatute 1686 did not apply to the eccleſiaſtical courts; that it was not the practice in church-judicatories to ſign their ſentences or records; and that as an extract of the ſentence of depoſition, atteſted by the preſbytery-clerk, was produced, there was no place for inquiry from what warrants that extract had been made out.

Upon this debate, the Lord Stonefield Ordinary, was pleaſed, by interlocutor, of this date, to allow the ſuſpender a proof before anſwer of the practice or method of the preſbytery of Peebles ſigning their minutes. Dec. 4. 1769.

Three witneſſes were accordingly adduced, *viz.* Mr Alexander Johnſton miniſter at Lyne, Mr Stephen Oliver miniſter of Innerliethen, and Mr William Oman the preſbytery-clerk.

Mr Johnſton deponed, " That he had been a miniſter in the preſby- " tery of Peebles for about 40 years; and *that it has been the practice*

" *of that preſbytery to record and ſign their minutes once in ſix months*;
" and that it has been the ſame practice in ſigning ſentences a-
" gainſt miniſters, ſo far as he can remember."

Mr Oliver deponed, " That he has been a miniſter of the preſ-
" bytery of Peebles for about 12 years; that it is the uſual practice of
" that preſbytery, ſince he was a member of it, to record and ſign
" their minutes and ſentences againſt miniſters in ſix months."

Oman, the preſbytery-clerk, deponed, " That he has been a-
" bout ſix years clerk to the preſbytery of Peebles; that it is the
" uſual practice of that preſbytery to record and ſign their minutes
" and ſentences againſt miniſters in ſix months."

And however raſh it may have been in theſe witneſſes to have depoſed ſo poſitively with reſpect to the practice of the preſbytery of Peebles, Mr Dickſon, deſirous to put the moſt favourable conſtruction upon their conduct, is willing to believe that it muſt have proceeded from error or miſapprehenſion, as ſuppoſing that ſuch muſt have been the practice of this preſbytery, becauſe it was the practice of other preſbyteries to which they refer.

But from whatever cauſe this error or miſtake ſhall be ſuppoſed to have proceeded, the alledged practice of the preſbytery of Peebles was effectually diſproved by the exhibits which Oman the preſbytery-clerk made in the after-part of his oath; and on account of which, Mr Dickſon is informed, he received a very ſevere rebuke from the preſbytery.

He exhibited " Three folio volumes of the records of the preſ-
" bytery of Peebles, beginning the 3d of Auguſt 1726, and end-
" ing the 23d April 1761; as alſo a bundle of *unſigned minutes*,
" with an extract of a part thereof, ſigned by the deponent, which
" extract conſiſts of 125 pages; and depones, That the reaſon
" why none of the minutes were recorded and ſigned ſince April
" 1761, was that the preſbytery did not chuſe to do it until
" the proceſſes between them and Mr David Dickſon were end-
" ed."

And as it thus appears from the teſtimony of this preſbytery-clerk, the fabricator of this pretended extract, from what materials the ſame was made out, *viz.* from a parcel of unſigned, unrecorded, minutes; ſo, upon inſpection of that bundle from the 1761 downwards, particularly thoſe reſpecting Mr Dickſon, they appeared to be a moſt extraordinary collection of ſcrawls, wrote upon

ſcraps

ſcraps of looſe paper, with numberleſs deletions, ſuperinductions, and interlineations, totally unconnected with one another, further than as ſome of them were pinned to others; and though the preſbytery-clerk has again got them into his poſſeſſion, they can be recovered by a diligence, if that ſhall be thought neceſſary, when they will again appear to be ſuch as above ſtated.

The particulars of which the memorialiſt is ſaid to have been convicted by this ſentence are, *firſt*, That he inſulted and maltreated Mr Dalglieſh in preſence of the preſbytery ſitting in judgment, without ſpecifying what the ſpecies of inſult was, whether real or verbal, or upon what occaſion this ſhould have happened.

2*dly*, That he wrote the threatening letter to Mr Mark, mentioned in the libel.

3*dly*, That he wrote the threatening letter to Mr Finlater, mentioned in the libel.

4*thly*, That he preached in the church of Newlands, notwithſtanding his being under ſentence of ſuſpenſion by the General Aſſembly. And if any credit could be given to the falſe and fabricated extract, it would from thence appear, that the depoſitions of the witneſſes referred to, for proof of the ſeveral articles above mentioned, were not then before the preſbytery, or ſo much as a copy thereof; but that they proceeded to judgment upon an alledged ſtate of the proof, ſaid to be made up by a committee of their number, neither the ſtate nor the pretended depoſitions themſelves anywiſe authenticated. And allowing all that is alledged to have been properly verified, it is ſubmitted to your Lordſhips, that they were manifeſtly moſt inſufficient to have founded ſo ignominious a ſentence; though, in juſtice to the moderator of the preſbytery, Mr Dickſon muſt acknowledge, that he is ſaid to have not only diſſented therefrom, but to have refuſed to ſign either the ſentence itſelf, or the former proceedings from which the extract is ſaid to be taken, and which, if not lately manufactured and fabricated ſince they were produced at your Lordſhips bar, were not ſo much as ſigned by the clerk.

And therefore it was, that upon the report of the Lord Ordinary, your Lordſhips, of this date, pronounced the following interlocutor: " In reſpect there is no proper evidence produced of " the charger Mr Dickſon's being depoſed, the Lords find the letters " orderly proceeded, and decern." And as the ſtipend was thereby decreed to Mr Dickſon, the heritors acquieſced therein; but as by this time, or ſoon thereafter, a preſentation had been obtained Feb. 6. 1763.

from

from the patron in favours of Mr Moffat, upon ſuppoſition of the church being vacant by the aforeſaid ſentence of depoſition, this reverend preſbytery, in manifeſt contempt and violation of the aforeſaid judgment, were pleaſed to proceed to the induction and collation of Mr Moffat to the benefice, and who, upon their act of ordination, charged the heritors for payment of the ſtipends to them.

This obliged the heritors to apply to your Lordſhips by ſuſpenſion and multiple-poinding; which coming to be heard before the Lord Kaims Ordinary, and there being produced a ſentence of the General Aſſembly, confirming the preſbytery's ſentence of depoſition, his Lordſhip was pleaſed, by interlocutors, of theſe dates, upon adviſing mutual memorials, to "find, that there is now ſufficient evidence of Mr Dickſon's depoſition, and therefore preferred Mr James Moffat to the ſtipend; and decerned in the preference againſt the purſuers of the multiple-poinding for payment accordingly." Of which interlocutors Mr Dickſon having complained to your Lordſhips by a reclaiming petition, the ſame was refuſed, by interlocutor, of this date, and a ſecond reclaiming petition was in like manner refuſed upon the laſt day of that ſeſſion.

Feb. 1. and 11. 1769.

Mar. 10. 1769.

Mr Dickſon being thus outed of his living, as the ſentence of the Venerable Aſſembly, as well as the later judgments of this Court, did all and each of them depend upon the ſuppoſed ſentence of depoſition; and as Mr Dickſon knew for certain that no ſuch ſentence of depoſitition had ever exiſted, and that the ſame and all the pretended previous minutes of preſbytery whereof he had obtained inſpection in manner above mentioned, were ſo many falſehoods and forgeries, he was adviſed, that the only proper method of bringing the ſame to a fair determination, was by a proceſs of reduction and improbation at his inſtance in this Court, with concourſe of his Majeſty's Advocate. A proceſs to the above purpoſe was accordingly inſtituted, in which this memorial comes now to be exhibited.

It is a common ſaying, that *Oppreſſion will make a wiſe man mad;* and as Mr Dickſon does not pretend to be exempt from human infirmities, he makes no difficulty to acknowledge, that the feelings he had of the perſecution he had undergone may have induced him to call as defenders more perſons than were proper or neceſſary.

The

The members of preſbytery, and their very reſpectful clerk were thoſe that he conſidered as principally intereſted to juſtify and maintain the pretended ſentences of depoſition: But as other members both of the ſynod and aſſembly had concurred in uſing that pretended ſentence for the purpoſe of rendering his depoſition the more effectual, when they knew or ought to have known the falſity thereof, it occurred to him to be proper that theſe ſhould alſo be made parties to the proceſs of reduction and improbation; and as, by means of that pretended ſentence, he had ſuffered an irreparable injury in his character, as well as a great patrimonial loſs, the ſummons concluded for a random ſum of a *L.* 10,000 Sterling, in name of damages and aſſythment.

The proceſs came by courſe of the roll before the Lord Auchinleck; and as Mr Dickſon had procured an extract of the pretended ſentence of depoſition by the preſbytery, the reality of which behoved in the firſt place to be tried, before he could have acceſs effectually to challenge the after-ſentence; of the aſſembly confirming the ſame, he ſatisfied the production in ſo far, by production of that extract of the preſbytery-ſentence; with which the Lord Ordinary made great aviſandum, by interlocutor, of this date. And Mr Dickſon having thereupon preferred a petition to your Lordſhips, praying a remit to the next week's Ordinary in the Outer-houſe, your Lordſhips, by interlocutor, of this date, "Granted warrant for inrolling the ſame in the next week's regulation roll in the Outer-houſe, and remitted to the Ordinary who ſhall call ſaid roll, to call and hear parties procurators on the reaſons of reduction, and other concluſions of the libel, to diſcuſs the ſame, and to do therein as he ſhall ſee cauſe."

July 26 1769.

Aug. 1. 1769.

In purſuance of this remit, the proceſs came to be inſiſted in before the Lord Barjarg, when compearance being made for four of the defenders, who diſclaimed their being parties to any of the tranſactions under reduction, and Mr Dickſon having judicially aſſented to paſs from them, but at the ſame time inſiſting for decreet againſt the other defenders for whom no compearance was made, the Lord Ordinary, by interlocutor, of this date aſſoilzyed theſe four defenders, and found them intitled to expences; and as to the other defenders, reduced, decerned, and declared, in terms of the libel, ſuperſeding extract till the 15th November next.

Aug. 10. 1769.

Againſt this judgment a repreſentation was preferred by a ſecond claſs of defenders, to which Mr Dickſon put in anſwers. But as the decreet had been acquieſced in by the remaining defenders, the ſame was extracted, and a charge of horning given to ſome of them.

In December 1769, Meſſ. Robertſon, Wiſhart, Hamilton, Webſter, M'Queen, and others, preſented a bill of ſuſpenſion, ſetting forth, That they were charged, or threatened to be charged, upon the aforeſaid decreet at Mr Dickſon's inſtance, for payment of the above mentioned ſum of *L.* 10,000, of which, for the reaſons therein ſet forth, they prayed ſuſpenſion, chiefly upon this ground, That by the laws and conſtitution of this country, there was a line drawn between the civil and eccleſiaſtical courts, by which the acts of decreets and the eccleſiaſtical courts, whether in licenſing, ordaining, or depoſing miniſters, are not ſubject to the review or cognizance of the Court of Seſſion, or any other civil court.

The ſuſpenſion being paſſed, came to be diſcuſſed before Lord Barjarg, when his Lordſhip was pleaſed, by interlocutor, of this
Feb. 1770. date, to ſuſpend the letters ſimpliciter, that is, the charge for payment of the L. 10,000

But as none of the defenders would undertake the defence in the proceſs of reduction, though they appeared by their counſel at every calling of the cauſe, without ſpecifying for which of the defenders that compearance was made; and as in the aforeſaid bill of ſuſpenſion, the juriſdiction of this Court had been objected to, the Lord Ordinary pronounced the following interlocutor: "26th
July 26. 1770. " July 1770. In reſpect none of the defenders called appear in " defence againſt the reaſons of reduction of the writs quarrelled, " ordains the purſuers to give in a memorial of the competency " of the reduction before this Court," after previous repeated orders upon " the preſbytery of Peebles and other defenders, to " condeſcend and ſay, if they do appear in defence of the reduction " of the deeds quarrelled, and will abide by them, and that between " and the 25th current; with certification."

Upon this ſtate of the caſe, your Lordſhips will obſerve, that the preſent proceſs is not a ſimple reduction of the ſentence or decreet of depoſition of the preſbytery of Peebles, but is a proceſs of reduction and improbation in the uſual form and ſtyle of ſuch ſummonſes, with concourſe of his Majeſty's Advocate, whereby that pretended ſentence is brought under challenge, as falſe, fabricated,

cated, and forged, which therefore ſuperſedes the neceſſity of entering into any argument reſpecting the juriſdiction of this Court to reduce a ſentence or decreet of any of the eccleſiaſtical courts, whether on account of any alledged irregularities in the proceedings, or of any iniquity and injuſtice by them committed in the the ordination, collation, or depoſition of any miniſter of the Church of Scotland, or in other matters purely eccleſiaſtical; and Mr Dickſon, as a miniſter of that Church, makes no difficulty to acknowlege the incompetency of this Court in queſtions of that nature.

But there are caſes of a mixed nature, in which the eccleſiaſtical courts are veſted with a civil juriſdiction, and by which the patrimonial rights and intereſts of the ſubjects of this country may be affected; ſuch as, the diviſion of churches, the deſignations of manſes and glebes, the right to the ſtipend, and others of the like nature, in which the preſbyteries and other eccleſiaſtical courts do not act in the eccleſiaſtical character, but as veſted with a civil juriſdiction in ſuch matters; in all and each of which therefore, their proceedings and decreets are ſubject to the review of this Court, the ſupreme judges in all civil rights. And upon this principle it is, that in various caſes, well known to your Lordſhips, notwithſtanding the collation and inſtitution granted by the church-judicatories in favours of one perſon, the patron or preſentee's right to the ſtipend has been declared by this Court. And as Mr Dickſon was once regularly admitted miniſter of the church of Newlands, and became thereby intitled to the ſtipend of that church ay and until he ſhould be legally removed therefrom, and as that neceſſarily depends upon the queſtion, whether he was actually depoſed by ſentence of the eccleſiaſtical court, however incompetent it may be for your Lordſhips to reſtore him to the exerciſe of his miniſterial function, as miniſter of that pariſh; yet, in ſo far as regards his right to the ſtipend, it may juſtly be doubted how far your Lordſhips have not a proper juriſdiction to take cognizance of that matter.

But that is not *hujus loci*; Mr Dickſon does not challenge the preſbytery's decreet of depoſition upon any ground of ſimple reduction; the proceſs he now maintains, is a proceſs of improbation, wherein he charges, That the pretended decreet of depoſition had never any real exiſtence, and that the pretended extract thereof is an abſolute forgery and falſehood, fabricated *ex poſt facto*, without any warrant.

There

There is no deed or writing of any kind that is not liable to challenge on the head of falſehood; neceſſity requires it ſhould be ſo; and it is equally clear that this branch of juriſdiction for the trial of forgeries, whether for puniſhment of the offence itſelf, or for improbation of the falſe writs *civiliter*, is only competent before the two ſupreme courts of civil and criminal juriſdiction. No other court in this kingdom is veſted with a juriſdiction for trial of matters of this kind. It has been doubted whether even the Court of Juſticiary have a founded juriſdiction for improving of writs *ad civilem effectum*; and it has never hitherto been diſputed, that the Court of Seſſion is the only other competent court in which proceſſes of improbation can be carried on.

That the eccleſiaſtical court has no ſuch power, is manifeſt; nor was any ſuch thing ever attempted; ſo that to deny the competency of this Court would, in other words, be a denial of the only remedy competent in law in which juſtice could be obtained.

Was Oman the preſbytery clerk, or any of the other defenders, who may be ſuppoſed acceſſary to this forgery, to be criminally proſecuted therefor before the Court of Juſticiary, What for a defence would it be, that the *corpus delicti* was a pretended ſentence of an eccleſiaſtical court? And if ſo be that the Court of Juſticiary muſt have been competent to take cognizance of the ſuppoſed offence, in order to inflict the proper puniſhment, What reaſon can be aſſigned why the ſupreme civil court, the only competent court for proceſſes of improbation, ſhould not have the like juriſdiction *ad civilem effectum?* This might be illuſtrated by numberleſs other examples. The criminal juriſdiction is as much ſeparated from the civil as the eccleſiaſtical juriſdiction can poſſibly be. And therefore, ſuppoſing that a forgery had been committed, either of the ſentence itſelf, or other proceedings of the criminal court; as for inſtance, in a bond of cautionry in a criminal proſecution depending in that court; it cannot admit of the leaſt doubt, that though the Court of Seſſion could not reduce the ſentence of that court, whether condemnator or abſolvitor, proceſs would be competent for improving the forged writ, whatever effect that might have in other reſpects.

There are ſundry inferior courts which have a privative and final juriſdiction in ſpecial matters, which cannot be reviewed or reduced by this ſupreme civil court; but if any forgery had been therein committed, it cannot poſſibly admit of a doubt, that the

Court

Court of Seſſion would be competent judges in a proceſs of improbation of ſuch falſe and fabricated writs.

The line of diſtinction therefore plainly is, That in matters purely eccleſiaſtical, the Court of Seſſion is veſted with no juriſdiction to review or reduce the decrees of eccleſiaſtical courts; but where the ſame are brought under challenge by a regular proceſs of improbation, they muſt either be totally exempted from the challenge of falſehood, or the trial thereof muſt lie in this Court. When Mr Dickſon ſhall have prevailed in the improbation, it will be matter of after-conſideration, what effect it may have in procuring full juſtice in reſtoring him to that office of which he has been ſo unjuſtly deprived, though it will have the effect of removing that ſtigma under which he now lies. But whatever the conſequences may be, the ſingle point that now falls to be determined by your Lordſhips, is the competency of this proceſs of improbation in this Court; and which, without further argument, is humbly ſubmitted.

In reſpect whereof, &c.

ALEX. LOCKHART.